IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRUCE A. ROWAN,	§	
	§	No. 95, 2011
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for Kent County
STATE OF DELAWARE,	§	
	§	Cr. No. 0910020105
Plaintiff Below,	§	
Appellee.	§	

Submitted: April 4, 2012
Decided: May 16, 2012
Revised: May 18, 2012

Before **BERGER**, **JACOBS** and **RIDGELY**, Justices.

O R D E R

This 18th day of May, 2012, on consideration of the briefs of the parties, it appears to the Court that:

1) Bruce A. Rowan appeals from his conviction, after a jury trial, of 56 counts of breach of condition of release. Rowan also was convicted of continuous sexual abuse of a child, and five counts of fourth degree rape, but he does not challenge those convictions. With respect to the breach of condition convictions, Rowan argues that the Superior Court erred in: 1) denying his motion to dismiss; 2) admitting into evidence tape recordings of his telephone calls from prison to the victim; and

3) admitting into evidence certain bond paperwork from the Justice of the Peace Court. We find no merit to these arguments, and affirm.

2) In January 2009, when Rowan was 41 years old, he began a sexual relationship with Jane Carson[1], who told Rowan she was 23, but actually was 16 years old. In April 2009 Carson became pregnant with Rowan's child and Rowan moved in with her. Shortly after becoming pregnant, Carson told Rowan her real age. Rowan moved out and began a relationship with another woman. Carson then contacted the police. After the baby was born, a DNA test confirmed that Rowan is the father.

3) On October 30, 2009, Rowan was arrested and arraigned at the police station via videophone connection with the Justice of the Peace Court. The court faxed Rowan a bond form, which he signed, that included an order prohibiting contact between Rowan and Carson. Rowan was incarcerated in default of $201,000 cash bail. He was indicted on December 7, 2009, and the Superior Court issued a summons ordering Rowan to be present at his arraignment on December 17, 2009. Rowan's counsel was not available on that date, and the arraignment was passed to the initial case review on December 28, 2009.

[1]This Court *sua sponte* has assigned a pseudonym pursuant to Supr. Ct. R. 7(d).

4) On December 22, 2009, Rowan was released from prison based on a disposition form submitted by the Court of Common Pleas – apparently in error. At the December 28 arraignment and case review, bond was set at $270,000 cash. Rowan was unable to post bond and again was incarcerated. Neither the court nor the State addressed the no-contact order.

5) Rowan was re-indicted on September 7, 2010. The 56 counts of breach of condition of release related to Rowan's telephone contact with Carson from prison after his arraignment on December 28th. He went to trial in December 2010 and was convicted on all of the breach of condition charges.

6) Rowan first argues that the Superior Court erred in denying his motion to dismiss the breach of condition charges. He contends that the no-contact condition in the first bond was "implicitly" discharged when the Superior Court set a $270,000 cash bond without re-imposing, or even discussing, any conditions.

7) Rowan offers no authority for his position, which ignores both the facts and the law. When he was arraigned on December 28, 2009, the State asked the court to *reinstate* the bond that had been imposed by the Justice of the Peace Court. Although there was no discussion about the conditions of the original bond, there is nothing in the record to suggest that the no-contact order was not included in the reinstated

bond. Thus, the suggestion that the no-contact condition was discharged is not supported by the facts.

8) Rowan's argument also fails as a matter of law. When a person is charged with a crime involving child sexual abuse, the court must impose a no-contact condition, "except upon good cause shown," and that condition remains in effect "until a *nolle prosequi* is filed, the case is dismissed or an adjudication of not guilty is returned . . . ."[2] This statutory mandate requires that a no-contact order remain in place, except upon order of the court "for good cause shown," until one of the three listed events occurs. There was no court order removing the condition, and the charges against Rowan were not dismissed or *nolle prossed*. Thus, the condition continued in effect.

9) Rowan next argues that the Superior Court violated his constitutional rights and the Delaware wiretap statute, by admitting tape recordings of his prison telephone calls to Carson. Because Rowan did not object to the admission of the tapes, his claims are reviewed for plain error, which is error that is "so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."[3]

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[2] 11 *Del. C.* § 2108(b).

[3] *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

10) In *Johnson v. State*,[4] this Court held that a defendant in pretrial detention has no reasonable expectation of privacy in his outgoing, non-privileged mail, where the defendant is on notice that his incoming mail will be inspected. Rowan, who knew that his outgoing calls were monitored, likewise had no expectation of privacy.

11) Rowan relies on *Johnson* to argue that the State was required to satisfy three "reasonableness" standards before the tapes could be admitted. *Johnson* is inapposite because in that case, the defendant moved to suppress his prison mail. Rowan never objected to the introduction of the tapes. Nothing in *Johnson* suggests that the court must evaluate the reasonableness of the subpoena *sua sponte*.

12) Rowan's reliance on the Delaware Wiretap Statute also fails. The statute generally prohibits the interception of wire, oral or electronic communications.[5] But it expressly authorizes the Department of Correction to intercept electronic or oral communications by inmates in correctional facilities.[6] Rowan argues, without any authority, that the Department of Correction may intercept phone conversations, but it has no authority to tape those conversations and turn them over to the Department of Justice. This argument lacks merit.

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[4] *Johnson v. State*, 983 A.2d 904, 919 (Del. 2009).

[5] 11 *Del. C.* § 2402(a).

[6] 11 *Del. C.* § 2402(c)(11).

13) Finally, Rowan argues that the trial court committed plain error in admitting a copy of the bond that included the no-contact provision. Rowan says that the bond was not authenticated and that it was inadmissible hearsay. Detective Andrew Goode testified that the paperwork for the bond was faxed from the Justice of the Peace Court and that he received the faxed copy, and gave it to Rowan, who signed it. Although the State did not produce a certified copy of the bond, Detective Goode's testimony was sufficient, in the absence of any challenge, to authenticate the document and to satisfy the hearsay exception for public records.[7]

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court be, and the same hereby are, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

[7]D.R.E. 803(8).